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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/990,896

11/16/2001

James Robert Kelton

VIXS.0100280

3453

29331

7590

01/23/2006

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EXAMINER

NGUYEN, STEVEN H D

ART UNIT

PAPER NUMBER

2665

DATE MAILED: 01/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/990,896

**Applicant(s)**

KELTON ET AL.

**Examiner**

Steven HD Nguyen

**Art Unit**

2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-28 and 50-54 is/are pending in the application.
- 4a) Of the above claim(s) 1-15 and 29-49 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-28 is/are allowed.
- 6) ☒ Claim(s) 50, 51, 53 and 54 is/are rejected.
- 7) ☒ Claim(s) 52 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/05, 8/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of group II in the reply filed on 11/10/05 is acknowledged. The traversal is on the ground(s) that the USPTO has history of examining a plurality of set of claims. This is not found persuasive because the applicant does not discuss how the groups are obvious in view of each other wherein each group has separated function such as group I the first and second data must transmitting concurrently as stated in the previous action.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 50-54 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 50 recites the limitation "the second device" in line 4. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 2665

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 50-51 and 53-54 rejected under 35 U.S.C. 102(e) as being anticipated by

Hamalainen (US 20030021243) in view of bark (US 20020160781).

Hamalainen discloses a method for determining a first power for transmitting data to a first device (Page 3, Sec 34, determining transmission power for a first mobile which is assigned a dedicated channel), determining a second transmission power for transmitting data to the second device (Page 3, Sec 34, determining transmission power for transmitting data on a shared channel for a second mobile), wherein the second device is different from the first device (Page 2, Sec 25-26, each channel assigned to the each mobile); configuring a first data channel to transmit data to the first device based on the first transmission power (Page 2, Sec 25); configuring a second data channel to transmit data to the second device based on the second transmission power (Page 2, Sec 25). However, Hamalainen fails to fully disclose configuring the second data channel to further receive data associated with the first device and the second device and determining transmission power for the first mobile to reduce a power required to transmit data to the first device. In the same field of endeavor, Bark discloses a method for determining transmission power for each mobile to be used for assigning a dedicated channel or shared channel in order to conserve transmission power (Page 4, Sec 43, 45 and 48, determining power, then assigned channel based on the transmission power level) and configuring the second channel for receiving the data associated with the first and second device (Page 2, Sec 15, the shared channel is shared by mobiles for transmitting data).

Since, Hamalainen suggests the power control command used to determine transmission power for dedicated channel and making link adaptation decisions for the shared channel and Bark suggests the use of transmission power for selecting dedicated or shared channel for conserving transmission power. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a method for determining the transmission for each mobile and assigning the channel based on the transmission power required as disclosed by Bark into the method of Hamalainen. The motivation would have been to conserve the transmission power.

Regarding claim 51, Hamalainen discloses ACKs are transmitted to the base station which corresponding the transmitted data to the mobiles (Page 3, Sec 37).

Regarding claim 53, Hamalainen inherently discloses the transmission powers being based on the amount of data that the channel can carry.

Regarding claim 54, Hamalainen discloses transmission power determined based signal quality (Page 1, Sec 6).

#### ***Allowable Subject Matter***

7. Claim 52 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 16-28 are allowed.

9. The following is a statement of reasons for the indication of allowable subject matter: the prior arts in the record fail to disclose determining a first transmission power for transmitting

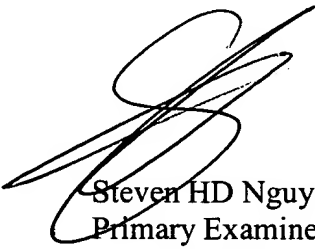
data to the first device on the first channel to reduce a time required to transmit data to the first device wherein the time required to transmit data to the first device is dependent on a time to transmit data to the second device on the second channel using the determined trans power of second device.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (571) 272-3159. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven HD Nguyen  
Primary Examiner  
Art Unit 2665  
January 17, 2006